

ENVIRONMENTAL QUALITY

CHAPTER 24

RECLAMATION

Sub-Chapter 4

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Sub-Chapter 4

Strip and Underground Mine Reclamation Act:
Mine Permit and Test Pit Prospecting Permit Procedures

17.24.401 FILING OF APPLICATION AND NOTICE (1) An applicant for an operating permit, a test pit prospecting permit, a renewal of an operating permit or test pit prospecting permit, a major revision to an operating permit or test pit prospecting permit, or an amendment (other than an incidental boundary revision) to add acreage to an operating permit or a test pit prospecting permit shall file the application with the department's main office in Helena and, if directed by the department, with the federal coal regulatory authority.

(2) The department shall determine whether an application is administratively complete within 90 days of receipt and shall immediately notify the applicant in writing of its determination. If the department determines an application is not administratively complete, the notice must list the specific items not adequately addressed in the application. Any items not listed in the notice are presumed to be addressed. If the department determines that the application is administratively complete, the notice must also advise the applicant whether an environmental impact statement must be prepared.

(3) Upon receipt of notice of the department's determination of administrative completeness, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed activity at least once a week for four consecutive weeks. The advertisement must contain, at a minimum, the following information:

- (a) the name and business address of the applicant;
- (b) a map or description, which must:
 - (i) clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;
 - (ii) for all applications except major revision applications, clearly show or describe the exact location and boundaries of the proposed permit area and state the acreage of that area;
 - (iii) state the names of the US geological survey 7.5- or 15-minute quadrangle maps that contain the area shown or described, if available; and
 - (iv) if a map is used, indicate the north point;
- (c) the location where a copy of the application is available for public inspection under (6) of this rule;

(d) the name and address of the department and the fact that written comments, objections, or requests for informal conferences on the application may be submitted by any person with an interest that is or may be adversely affected to the department within 30 days following the last advertisement of the application;

(e) if an applicant seeks a permit to conduct mining operations within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, a concise statement describing the public road, the particular operations within the 100 feet or the particular part to be relocated or closed, where any relocation or closure is to occur, and the duration of the operations or relocation;

(f) if an alternative postmining land use plan is submitted, a brief description of the plan; and

(g) if an extension of time to commence mining is sought, the length of extension applied for. (See ARM 17.24.412.)

(4) For filing and public notice procedures for bond release applications, see ARM 17.24.1112.

(5) Immediately upon issuance of a determination of administrative completeness, the department shall:

(a) issue written notification of:

(i) the applicant's proposed activity and a description of the boundaries and location of the proposed activity;

(ii) the application number;

(iii) where a copy of the application may be inspected;

(iv) the applicant's alternative postmining land use plans, if any; and

(v) the fact that comments or objections to the application and requests for informal conference may be submitted and the address to which they may be submitted.

(b) The written notifications must be sent to:

(i) federal, state and local government agencies with jurisdiction over or an interest in the area of the proposed operations including, but not limited to, general governmental entities, fish and wildlife and historic preservation agencies, the U.S. natural resources conservation service state office, the U.S. army corps of engineers, district engineer, and the national park service;

(ii) governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;

(iii) sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(iv) the federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.

(6) Upon receipt of the department's determination of administrative completeness, the applicant shall make a full copy of the complete application available for the public to inspect and copy by filing a copy of the application with the recorder at the courthouse of the county where the mining is proposed to occur, or, if approved by the department, at another equivalent public office. The department may approve filing at an equivalent public office if it determines that that office will be more accessible to local residents than the county courthouse. The applicant shall file any subsequent revision of the application with the clerk and recorder or other approved public office at the same time the revision is submitted to the department. (History: 82-4-204, MCA; IMP, 82-4-222, 82-4-226, 82-4-231(4), 82-4-232, 82-4-233, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.402 SUBMISSION OF COMMENTS AND WRITTEN OBJECTIONS

(1)(a) The governmental entities specified in ARM 17.24.401(5)(b) may file written comments on applications with the department with respect to the effects of the proposed mining operations on the environment within their areas of responsibility. These comments must be submitted to the department within 30 days of receipt of written notice pursuant to ARM 17.24.401(5).

(b) The department shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application under ARM 17.24.401(6). A copy must also be transmitted to the applicant.

(2)(a) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority shall have the right to file written objections to an initial or revised application with the department within 30 days after the last publication of the newspaper notice required in ARM 17.24.401(3).

(b) The department shall, immediately upon receipt of any written objections:

(i) transmit a copy of them to the applicant; and

(ii) file a copy for public inspection in the Helena and Billings offices of the department. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-226, 82-4-231, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.403 INFORMAL CONFERENCE (1) Any person whose interests are or may be adversely affected by the decision on an application submitted pursuant to ARM 17.24.401(1) or the officer or head of any federal, state or local government agency or authority may, in writing, request that the department hold an informal conference on that application. The request must:

(a) briefly summarize the issues to be raised by the requestor at the conference;

(b) state whether the requestor desires to have the conference conducted in the locality of the proposed activity; and

(c) be filed with the department not later than 30 days after the last publication of the newspaper advertisement placed by the applicant under ARM 17.24.401(3).

(2) Except as provided in (3) of this rule, if an informal conference is requested in accordance with this rule, the department shall hold an informal conference within 30 days following the receipt of the request. The informal conference shall be conducted according to the following:

(a) If requested under (1)(b) of this rule, it must be held in the locality of the proposed activity.

(b) The department shall advertise the date, time, and location of the informal conference in a newspaper of general circulation in the locality of the proposed activity at least 2 consecutive weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requestor in a reasonable time prior to the conference, the department may arrange with the applicant to grant parties to the conference access to the mine plan area for the purpose of gathering information relevant to the conference.

(d) The conference must be conducted by a representative of the department, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record must be made of the conference proceeding, unless waived by all the parties. The record must be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond.

(3) If all parties requesting the informal conference stipulate before the informal conference to withdraw their request, the informal conference need not be held.

(4) The department shall notify the applicant and all parties to the informal conference of its decisions and the reasons therefor within 60 days of the informal conference.

(History: 82-4-204, 82-4-205, MCA; IMP, 82-4-226, 82-4-231, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.404 REVIEW OF APPLICATION (1) The department shall review each administratively complete application, written comments, written objections submitted, and records of any informal conference held and determine the acceptability of the application within 120 days of its determination of administrative completeness. If the applicant significantly modifies the application before the acceptability determination, the department shall conduct a new review, including an administrative completeness determination, public notice, public review, and 120-day review period.

(2)(a) If the application is not acceptable, the department shall notify the applicant in writing, setting forth the reasons why it is not acceptable. The department may propose modifications, delete areas, or reject the entire application. All items not identified as unacceptable are presumed acceptable.

(b) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant within 120 days of date of receipt, except that if the revision constitutes a significant modification, the department shall conduct a new review, including an administrative completeness determination, public notice, and public review.

(3) If the department determines that the application is acceptable, the department shall:

(a) publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed activity. The notice must state that any person with an interest that is or may be adversely affected may, within 10 days of the second published notice, file written objections or file written objections and request an informal conference within 10 days of the second published notice; and

(b) if a written objection is filed and an informal conference requested, hold an informal conference in the locality of the proposed activity within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of the decision and the reasons therefor within 10 days of the informal conference.

(4) The department shall determine the adequacy of the fish and wildlife plan submitted pursuant to ARM 17.24.312 in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed strip or underground mining operations.

(5) The department shall assure that:

(a) cultural resource locations remain confidential;

(b) a determination of effect is completed for all listed or eligible cultural resource sites in accordance with 36 CFR 800;

(c) coordination of the review process for cultural resource compliance is carried out in accordance with the provisions of the Archeological Resources Protection Act of 1979 (16 USC 470aa, et seq.), where federal or Indian lands are involved; and

(d) the permit review process is coordinated with applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531, et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661, et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703, et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470, et seq.); and the Bald Eagle Protection Act, as amended (16 USC 469, et seq.).

(6) If the department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued.

(7)(a) If, based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to 30 USC 1268, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violation of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any strip or underground coal mining operation, the department determines that issuance of the permit is prohibited pursuant to 82-4-227(11), MCA, the department may issue the permit only upon a showing that the applicant or person who either owns or controls the applicant or is owned or controlled by the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the violation.

(b) If the initial judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any strip or underground coal mining operations being conducted under a permit issued according to this section must be terminated within 30 days of the judicial decision, unless the applicant provides within that period, proof that the violation has been or is in the process of being resolved to the satisfaction of the agency having jurisdiction over the violation.

(8) Any permit that is issued on the basis of proof submitted under 82-4-227(11), MCA, that a violation is in the process of being corrected, or pending the outcome of an appeal described in (7), must be conditionally issued. (History: 82-4-204, 82-4-206, MCA; IMP, 82-4-226, 82-4-231, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1990 MAR p. 936, Eff. 5/18/90; AMD, 1994 MAR p. 2957, Eff. 11/11/94; AMD, 1995 MAR p. 30, Eff. 1/13/95; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 1999 MAR p. 2768, Eff. 12/3/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.405 FINDINGS AND NOTICE OF DECISION (1) The department shall prepare written findings approving or denying an application filed pursuant to ARM 17.24.401(1) in whole or in part no later than 45 days from the date of the acceptability determination except as provided by 75-1-208(4)(b), MCA.

(2) Whenever the department has determined that it must prepare an environmental impact statement prior to a permit decision, the department shall complete the environmental impact statement in accordance with 82-4-231, MCA.

(3) Whenever an informal conference has been held, the department shall give its written findings and notice of decision to the applicant and to each party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(4) Whenever no informal conference has been held, the department shall give its written findings and notice of decision to the applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

(5) Simultaneously with distribution of the written findings and notice of decision under (3) and (4), the department shall give a copy of its findings and notice of decision to each person or government official who filed a written objection or comment with respect to the application.

(6) The department may not approve an application submitted pursuant to ARM 17.24.401(1) unless the application affirmatively demonstrates and the department's written findings confirm, on the basis of information set forth in the application or information otherwise available that is compiled by the department, that:

(a) the application is complete and accurate, that the applicant has complied with the Act and rules, and that the applicant has demonstrated reclamation can be accomplished;

(b) the permit area is not within an area being considered for or has not been designated as unsuitable for mining;

(c) the hydrologic consequences and cumulative hydrologic impacts will not result in material damage to the hydrologic balance outside the permit area;

(d) the applicant has paid all reclamation fees from previous and existing operations nationwide;

(e) the operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modifications of their critical habitats;

(f) the applicant has complied with applicable federal and state cultural resource requirements, including ARM 17.24.318, 17.24.1131 and 17.24.1137;

(g) the applicant has applied for any required air quality and water quality permits;

(h) approval of the application is not prohibited pursuant to 82-4-227(11), MCA, or that, if the applicant has existing violations, the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the violation;

(i) approval of the application is not prohibited pursuant to 82-4-227(12), MCA;

(j) if an alternative postmining land use is proposed, the requirements of ARM 17.24.821 and 17.24.823 have been met;

(k) for mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted the documentation required under ARM 17.24.303;

(l) the applicant proposes to use existing structures in compliance with ARM 17.24.1302; and

(m) if the application is for a remining operation, the permit area is a "previously mined area."

(7)(a) If the department decides to approve the application, it shall:

(i) require the applicant to date, correct, or indicate that no change has occurred in the information submitted pursuant to ARM 17.24.303(1)(a) through (h) and (k) through (m);

(ii) reconsider the decision to approve the application based on the compliance review required by ARM 17.24.404 and 82-4-227(11), MCA, in light of any new information submitted pursuant to (i); and

(iii) if, after reconsideration pursuant to (ii), the department determines that permit issuance is not prohibited, require that the applicant file the required performance bond or provide other equivalent guarantee.

(b) Upon submission of bond or guarantee, the department shall grant the permit, revision, or amendment. (History: 82-4-204, 82-4-206, MCA; IMP, 82-4-226, 82-4-231, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1990 MAR p. 936, Eff. 5/18/90; AMD, 1994 MAR p. 2957, Eff. 11/11/94; AMD, 1995 MAR p. 30, Eff. 1/13/95; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 1999 MAR p. 2768, Eff. 12/3/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.406 IMPROVIDENTLY ISSUED PERMITS: GENERAL PROCEDURES

(1) If the department determines that it has reason to believe it improvidently issued an operating permit, it shall review the circumstances under which the permit was issued, using the criteria in (2) of this rule. If the department finds that the permit was improvidently issued, it shall comply with (3) of this rule.

(2) The department shall find that an operating permit was improvidently issued whenever:

(a) under the violations review criteria of ARM 17.24.404 at the time the permit was issued:

(i) the department should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

(ii) the permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order was subsequently issued;

(b) the violation, penalty or fee:

(i) remains unabated or delinquent; and

(ii) is not the subject of a good faith appeal, or of an abatement plan or a payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) if the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of ARM 17.24.404 at the time the permit was issued and the ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

(3) Whenever the department finds under (2) of this rule that because of an unabated violation or delinquent penalty or fee that a permit was improvidently issued, it shall impose 1 or more of the following remedial measures:

(a) implementation, with the cooperation of the permittee or other responsible person, and of the responsible agency, of a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) imposition on the permit of a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) suspension of the permit until the violation is abated or the penalty or fee is paid; or

(d) if action under (b) or (c) above is unsuccessful, revocation of the permit under ARM 17.24.407. (History: 82-4-205, MCA; IMP, 82-4-204, 82-4-205, 82-4-222, 82-4-227, MCA; NEW, 1994 MAR p. 2957, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.407 IMPROVIDENTLY ISSUED PERMITS: REVOCATION (1) If the department, pursuant to ARM 17.24.406(3)(d), elects to revoke an improvidently issued permit, it shall serve on the permittee a notice of proposed suspension and revocation. The notice must include the reasons for the finding under ARM 17.24.406(3) and state that:

(a) after a specified period of time not to exceed 90 days, the permit automatically will become suspended, and not to exceed 90 days thereafter revoked, unless within those periods the permittee submits proof, and the department finds, that:

(i) the finding of the department under ARM 17.24.406(2) was erroneous;

(ii) the permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(iii) the violation, penalty or fee is the subject of a good-faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(iv) since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

(b) after permit suspension or revocation, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures required by the department; and

(c) the permittee may file an appeal under ARM 17.24.425. (History: 82-4-205, MCA; IMP, 82-4-204, 82-4-205, 82-4-222, 82-4-227, MCA; NEW, 1994 MAR p. 2957, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 2852.)

Rules 17.24.408 through 17.24.411 reserved

17.24.412 EXTENSION OF TIME TO COMMENCE MINING (1) The department shall specifically set forth in the permit any extension of the three-year limitation granted pursuant to 82-4-221(1), MCA.

(2) A request pursuant to 82-4-221(1), MCA, for extension of time to commence mining is subject to the public notice and participation requirements of ARM 17.24.401 through 17.24.403.

(3) The notice must include the items required in ARM 17.24.401(3) and the following:

(a) the permit number;

(b) the grounds for the extension request. (History: 82-4-204, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.413 CONDITIONS OF PERMIT (1) The following conditions accompany the issuance of each permit:

(a) Except to the extent that the department otherwise directs in the permit that specific actions be taken, the permittee shall conduct all operations as described in the application as approved by the department.

(b) The permittee shall comply with any express conditions which the department places on the permit to ensure compliance with the Act or this rule promulgated pursuant thereto.

(c) The permittee shall pay all reclamation fees for coal produced under the permit.

(d) Within 30 days after a cessation order is issued under 30 CFR 843.11 or 82-4-251, MCA, for operations conducted under the permit, except where a stay of the cessation order has been granted and remains in effect, the permittee shall either submit to the department the following information, current to the date the cessation order was issued, or notify the department in writing that there has been no change since the immediately preceding submittal of such information:

(i) any new information needed to correct or update the information previously submitted to the department by the permittee under ARM 17.24.303(1)(a) through (h); or

(ii) if not previously submitted, the information required from a permit applicant by ARM 17.24.303(1)(a) through (h).

(e) Except as provided in ARM 17.24.1107, the permittee shall maintain in effect at all times a bond in the amount approved by the department and that, upon failure of the permittee to maintain such bond coverage because of expiration or cancellation of bond, the permit is suspended and the permittee shall cease mining operations until substitute bond is filed with and approved by the department.

(f) a permittee shall immediately notify the department whenever a creditor of the permittee has attached or obtained a judgment against the permittee's equipment or materials in the permit area or on the collateral pledged to the department. (History: 82-4-204, MCA; IMP, 82-4-227, 82-4-231, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1995 MAR p. 30, Eff. 1/13/95; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.414 REVIEW OF EXISTING PERMITS (1) The department shall review each operating permit issued during the term of the permit. This review must occur not later than the middle of the permit term.

(2) After this review, the department may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with the Act and this subchapter.

(3) The department shall send a copy of its decision to the permittee.

(4) Any order of the department requiring revision or modification of permits must be based upon written finding and must be subject to the provisions for administrative review provided in ARM 17.24.425. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-237, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.415 PERMIT REVISIONS (1) An application for revision to a permit must be submitted for departmental review:

(a) for any proposed change(s) in the operation as described in the original permit and subsequent revisions thereof; or

(b) when required under ARM 17.24.414.

(2) The operator may not implement the revision before obtaining the department's approval.

(3) An application for major revision:

(a) must comply with subchapter 3, as appropriate;

(b) is subject to the public notice and participation provisions of ARM 17.24.401 through 17.24.405; and

(c) must include submittal of a new or updated probable hydrologic consequence determination, if determined necessary by the department for adequate permit review.

(4) If impacts change, the department shall update the cumulative hydrologic impact assessment. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.416 PERMIT RENEWAL (1) Applications for renewals of a permit must be made at least 240, but not more than 300 days prior to the expiration date. Renewal applications must be on a form provided by the department, including, at a minimum, the following:

(a) a statement of the name and address of the permittee, the term of the renewal requested, and the permit number;

(b) a proposed newspaper notice and proof of publication of a department-approved newspaper notice pursuant to (2);

(c) evidence that a liability insurance policy or adequate self-insurance will be provided by the applicant for the proposed period of renewal; and

(d) an update of ownership and control information and violation histories in accordance with ARM 17.24.303.

(2) Applications for renewal are subject to the requirements of public notification and participation contained in ARM 17.24.401 through 17.24.405.

(a) If the operations authorized under the original permit were not subject to the standards contained in 82-4-227(3)(b), MCA, because the permittee complied with the exceptions contained in 82-4-227(4), MCA, the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan for the original permit is not subject to the standards contained in 82-4-227(3)(b), MCA.

(b) Before finally acting to grant the permit renewal, the department shall require any additional performance bond needed by the permittee to comply with ARM 17.24.1104(1).

(3) No permit renewal may exceed the period of the original permit.

(4)(a) The department shall, upon the basis of application for renewal and completion of all procedures required under this rule, issue a renewal of a permit, unless it is established and written findings by the department are made that:

(i) the terms and conditions of the existing permit are not being satisfactorily met;

(ii) the present strip or underground mining operations are not in compliance with the environmental protection standards of the Act or subchapters 5 through 9.

(iii) the requested renewal substantially jeopardizes the operator's continuing responsibility to comply with the Act, the rules adopted pursuant thereto, and the reclamation plan on existing permit areas;

(iv) the operator has not provided evidence that:

(A) any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the department might require; and

(B) adequate liability insurance will be provided;

(v) any additional revised or updated information required by the department has not been provided by the applicant;

(vi) the applicant has not agreed to comply with all applicable laws and rules in effect at the time of renewal;

(vii) the renewal is prohibited by the denial provisions of 82-4-227, 82-4-234, and 82-4-251, MCA; or

(viii) the operation has been in a state of temporary cessation for six or more years.

(b) In determining whether to approve or deny a renewal, the burden must be on the opponents of renewal.

(c) The department shall send copies of its decision to the applicant, to any persons who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

(d) Any person having an interest which is or may be adversely affected by the decision of the department has the right to administrative review pursuant to ARM 17.24.425.

(5) An operating permit need not be renewed for a site at which coal extraction, processing, and handling have been completed. Permit expiration does not relieve the operator of the duty to comply with the Act, this subchapter, and the permit and to retain the bond and liability insurance in full force and effect until final bond release. (History: 82-4-204, MCA; IMP, 82-4-221, 82-4-226, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1994 MAR p. 2957, Eff. 11/11/94; AMD, 1995 MAR p. 2263, Eff. 10/27/95; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 1999 MAR p. 2768, Eff. 12/3/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.417 PERMIT AMENDMENT (1) Any application to amend the permit by adding acreage, other than an incidental boundary revision, is subject to the same application, notice, and hearing requirements as an application for a new permit as required by 82-4-225, MCA. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-225, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.418 TRANSFER OF PERMITS (1) No transfer or assignment of any permit may be made without the prior written approval of the department.

(2) The department may not approve any transfer or assignment of any permit unless the potential transferee or assignee:

(a) obtains the performance bond coverage of the original permittee by:

(i) obtaining transfer of the original bond;

(ii) obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the department. If such an agreement is reached, the department may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement; or

(iii) providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; and

(b) provides the department with an application for approval of such proposed transfer, assignment, or sale, including:

(i) the name and address of the existing permittee;

(ii) the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent and a brief description of the proposed transaction; and

(iii) the same information as is required in subchapter 3 for applications for new permits.

(3)(a) The applicant for transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, the address of the department, and a statement that written comments may be sent to the department within 15 days of publication of the notice.

(b) Any person may submit written comments on the application for approval to the department within 15 days of the publication of the newspaper notice described above.

(4) The department may, upon the basis of the applicant's compliance with the requirements of (1) through (3) of this rule grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:

(a) the person seeking approval is qualified under the Act and ARM 17.24.405 to receive a permit and will conduct the

operations covered by the permit in accordance with the Act and the rules adopted pursuant thereto;

(b) the applicant has submitted a performance bond at least equivalent to the bond or other guarantee of the original permittee; and

(c) the applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit.

(5)(a) The department shall notify the permittee, successors, commentors, and the federal coal regulatory authority of its findings and publish a summary of the decision in a newspaper of general circulation in the locality of the permit area.

(b) The successor shall immediately provide notice to the department of the consummation of the transfer, assignment, or sale of permit rights. Upon receipt of this notice, the department shall release the original permittee from all obligations not retained under (2) of this rule.

(6) Any successor in interest seeking to change the boundaries of its operations or any of the terms or conditions of the original permit must:

(a) make application for a permit amendment if the change involves conducting operations outside the original permit area; or

(b) make application for permit revision if the change does not involve conducting operations outside the original permit area. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-238, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

Rules 17.24.419 through 17.24.424 reserved

17.24.425 ADMINISTRATIVE REVIEW (1) Within 30 days after the applicant or permittee is notified of the final decision of the department concerning the application submitted pursuant to ARM 17.24.401, or an application for transfer, sale, or assignment of rights, the applicant, permittee, landowner, or any person with an interest which is or may be adversely affected may submit a written request for a hearing on the reasons for the final decision. The request must contain the grounds upon which the requester contends the decision is in error.

(2) The department shall commence the hearing within 30 days of such request. For the purposes of the hearing, the department may order a site inspection. The hearing is a contested case hearing and no person who presided at an informal conference shall either preside at this hearing or participate in the decision thereon.

(3) The department may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

(a) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(b) the person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(c) the relief will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) the relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the department.

(4) A verbatim record of each public hearing shall be made and a transcript made available on the motion of any party or order of the hearing officer.

(5) Ex parte contacts between representatives of the parties before the hearing examiner and the hearing examiner are prohibited.

(6) Within 20 days after the close of the record, the department shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the department with respect to the appeal.

(7) The burden of proof at such hearing is on the party seeking to reverse the decision of the department. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-206, 82-4-221, 82-4-226, 82-4-231, 82-4-232, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.426 RECORDS RETENTION (1) Copies of all records, reports, maps, or other documents submitted to or generated by the department under the Act and rules must be made available to the public for at least five years after bond release and must be disposed of in accordance with Title 2, chapter 6, MCA, and supporting policy and procedures. Superseded application materials, withdrawn applications, and outdated maps which are not needed for the purpose of bond release application evaluation are not subject to these provisions. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-222, 82-4-232, MCA; NEW, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.427 CHANGE OF CONTRACTOR (1) The permittee shall notify the department of a proposed new contractor or any proposed change in a contractor responsible for day-to-day operations at a permit area. When such a change is proposed without transfer of the permit pursuant to ARM 17.24.418, the permittee shall submit the following to the department:

(a) information required under ARM 17.24.303 for the contractor;

(b) a statement acknowledging that the permittee is not relieved of any compliance responsibilities under the Act; and

(c) a statement identifying a designated agent of the contractor.

(2) The contractor may not conduct any activities on the permit area unless and until the department determines that the information submitted under (1) is acceptable and satisfies the requirements of ARM 17.24.303. (History: 82-4-204, MCA; IMP, 82-4-222, 82-4-227, 82-4-238, 82-4-251, MCA; NEW, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

